IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Appeal Lodging No.998 of 2003
in
Summons for Judgment No. 3 of 200l
in
Summary Suit No. 3363 of 2000

Rajesh Jitendra Sarvaiya & anr..Appellants
vs
SICOM limited ..Respondents

Mr.M.K.Nesari for appellants
Mr Prakash Panjabi for respondent no l.
Mr.K.R.Belosey AGP for respondent no. 2

CORAM: A.P.SHAH & S.J.VAZIFDAR JJ.

Dated 25.2.2005

P.C:

Heard Advocates for the parties.

l. This appeal is directed against the judgment and decree passed by the learned single judge in a suit filed by the respondent SICOM for recovery of the amount. The suit is filed against the guarantor for recovery of Rs 5 lacs advanced to M/s Serene Industries Limited. In this suit the SICOM took out a Summons for Judgment No.3 of 200l and after hearing the parties the learned Judge made the same absolute and decreed the suit in terms of prayer clauses (a) and (b).

2. Mr.Nesari, appearing for the appellant

contended that the suit is barred by the provisions of section 22 of the 'Sick Industrial Companies (Miscellaneous Provisions) Act, l985, (for short 'SICA'). The admitted facts are that the reference made by the company under the SICA being Reference No.269 of l998 was registered with the BIFR on 8.l0.l998. This reference was rejected by the BIFR on 20.l2.l999 and appeal filed before the AAIFR being Appeal No.26 of 2000 was dismissed on 6.6.2000. The appellant then moved the Delhi High Court by filing a writ petition being CW No.3l98 of 2000. In that petition the Delhi High Court granted interim stay to the order of the AAIFR on l9.6.2000. This writ petition was finally dismissed by the Delhi High Court on 24.4.2002 with cost of Rs.l0,000. Thereafter the appellant filed second reference being Case No.276 of 2002 and that reference was registered on l0.7.2002. The suit was stayed in view of the reference being pending before the BIFR but BIFR has granted permission to the SICOM to take proceedings in the suit vide order dated l6.4.2003. Mr.Nesari's argument is that when the suit was filed on ll.8.2000 the appellant had preferred a writ petition in the Delhi High Court and the Delhi High Court had stayed the order of the AAIFR and, thus the company continued under BIFR and consequently the bar of

section 22 of the SICA was clearly attracted. and the subsequent permission will not cure this defect which goes to the root of the matter and the decree passed in such a suit is void and without jurisdiction. The submission is devoid of any merit. SICOM intervened in the writ petition filed by the appellant before the Delhi High Court and the Delhi High Court vide order dated l9.2.200l clarified that the interim order dated l9.6.2000 will not come in the way of the suit being tried. The reference which was filed by the appellant was already dismissed by the BIFR and AAIFR and thus provisions of section 22 of the SICA were not applicable on the date of filing of the suit. Therefore the submission of Mr. Nesari based on section 22 of the SICA Act deserves to be rejected.

3. The next contention of Mr. Nesari is that the first instalment was payable on l.6.l996 which was admittedly not paid and thus cause of action against the guarantor arose on l5.6.l996 and the suit is filed on ll.8.2000. It is thus clearly time barred.This argument is without any basis. In the first place the loan was repayable till July l998 and therefore the suit filed on ll.8.2000 is within limitation . In any event of the matter after excluding the period before the BIFR the suit

is clearly within limitation.

Appeal is dismissed with costs.